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HAND DELIVERY

The Honorable Charles Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, SC 29210

RE: Proposed revisions to Article 8 of the Public Service Commission regulations

Dear Mr. Terreni:

On behalf of South Carolina Electric & Gas Company, let me first express my appreciation for the opportunity to offer comments on the proposed revisions to the Practice and Procedure article of the Commission's regulations. SCE&G applauds the Commission's proactive approach to addressing issues and concerns of the entities and practitioners who often appear before the Commission through revisions and updates to the regulations.

Looking at the definitions section (103-804), it may be useful to include "cooperatives" and "entities" within the definition of "Person" to be consistent with the language amendment in 103-801 (adding "cooperatives" and "entities" for jurisdictional purposes). Additionally, within the definition of "Formal Record," it should be made clear that "staff memoranda or data" can only be submitted to the hearing officer or the Commission within the context of the proceeding where it was previously served on all parties (although this clause may be an anachronism given the creation of ORS). Furthermore, within the definition of "Proceeding," it may be appropriate that the last phrase be amended to reflect that a communication should only be written (rather than written *or oral*) and only from ORS (rather than Staff).

In reviewing the "Proceeding" and "Copies of Pleadings" sections, it is our understanding that the Commission will fix the number of copies for various pleadings based upon the needs of the Commission. Commission staff has indicated that this will be done through an order. If such an order occurs within a specific docket, then this is certainly permitted. If an order is issued generically, however, it could be understood that as an "agency statement of general applicability that implements or prescribes law or policy or practice requirements" it becomes a requirement

that is a "regulation" subject to formal rulemaking under the APA. See S.C. Code Ann. § 1-23-10(4) (definition of regulation). Notably, the South Carolina Rules of Civil Procedure as well as the Rules of Procedure of the Administrative Law Court are both reviewed and approved by the General Assembly.

The "Copies of Pleadings" section includes proposed language that electronic copies should be served "according to such procedures as may be promulgated by the Commission." Again, the end result of this requirement may implicate the formal rulemaking procedures under the APA. The use of the word "promulgate," which is a defined term under the APA, would further indicate that electronic filing procedures that the Commission would adopt would in fact be subject to formal rulemaking.

Regarding the electronic filings, the "Signature and Verification" section includes proposed language that the filing of an electronic copy requires "an electronic signature consistent with" South Carolina's Uniform Electronic Transaction Act. This requirement raises several issues. First, the filing of pleadings electronically does not obviate the need for a hard copy original. Under the proposed language, electronic copies are to be provided "where practicable." The revised regulations would not allow electronic filing as the only means of service and filing. From that standpoint, the requirement for an electronic signature for copies of those pleadings seems redundant, because the Commission will have an original signature for authentication and verification purposes in any event. The goal of electronic filing in the federal courts, for example, is to eliminate the necessity of filing hard copy originals. Further, the purpose of the South Carolina Uniform Electronic Transaction Act is to facilitate enforceable, binding agreements through an electronic means instead of requiring a signed hard copy. If the Commission were to allow electronic filing *in lieu of* the filing of hard copies, then such a signature verification requirement would be justified and necessary. However, under the present circumstances and practice, a requirement for an electronic signature (as opposed, for instance, to a scan of an original) that complies with the South Carolina Uniform Electronic Transaction Act may actually deter the submission of electronic copies rather than encourage it.

Additionally, the Commission may want to consider an alternative to modeling an electronic signature and verification requirement on the Uniform Electronic Transaction Act. That act relies on the requirements set forth by the Budget and Control Board. The act also presents technical issues in its own right that need to be explored. For example, an electronic postmark from the U.S. Post Office, which is an option under the act, can be invalidated by certain common settings in Microsoft's Outlook program. Alternatively, the Commission could allow for scanned original documents and/or a personal identification system similar to the login procedures utilized by the federal courts.

The "Filing and Service of Pleadings" section seems to leave a gap regarding service. Service of a complaint or petition by the Chief Clerk and the complainant/petitioner is permissive in nature rather than mandatory, which could inadvertently result in neither party serving a defendant/respondent. This potential gap should be eliminated to avoid any future confusion.

For the "Computation of Time" provision, the Commission could explicitly adopt by regulation the "mailbox rule" or otherwise allow the SCRCF to govern time issues. See Rule 6,

SCRCP. This is the current practice and understanding, but a formal acknowledgement seems appropriate.

Several comments from others have been made regarding the elimination of the "data request" provisions. It appears from a reading of the proposed regulations that written interrogatories from any party to another are still available and subject to a 10 day response period. Such a short time period often causes a respondent a reasonable amount of angst in putting together these responses, and it would be appropriate and beneficial to all parties involved to lengthen the time period. (Additionally, the time period in the clause prohibiting the service of interrogatories within 10 days of the commencement of the hearing should likewise be amended to be consistent with a new interrogatory response time period.) While the full 30 day period as provided in the SCRCP may not be necessary, a 20 day period seems appropriate. It also appears that a request for documents or request to produce would fall within the civil discovery catch-all in new section 103-835, which would provide for a 30 day response period, which is adequate.

Finally, the Commission may want to consider adding a provision to the effect that where not otherwise addressed or inconsistent with the regulations, the SCRCP shall apply. While the SCRCP are expressly referenced for discovery purposes, this addition would be appropriate for other instances and also reflect the current practice.

Again, SCE&G sincerely appreciate the Commission's time and consideration in reviewing the regulations and actively seeking the input of those who regularly practice and appear before the Commission. If you have any questions or would like to discuss any of these issues further, please do not hesitate to contact me.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.



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